



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2023/044

Judgment No.: UNDT/2024/055

Date: 4 September 2024

Original: English

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**Before:** Judge Solomon Areda Waktolla

**Registry:** Nairobi

**Registrar:** Wanda Carter, Registrar

BANGAMBILA

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for the Applicant:**

Martine Lamothe, OSLA

Aly Ahmed, OSLA

**Counsel for the Respondent:**

Isavella Vasilogeorgi, DAS/ALD/OHR, UN Secretariat

Andrea Ernst, DAS/ALD/OHR, UN Secretariat

## **Introduction and Procedural History**

1. The Applicant used to serve as an Associate Judicial Affairs Officer (National), on a fixed-term appointment with the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (“MONUSCO”). She was based in Kinshasa.
2. On 15 May 2023, she filed an application with the United Nations Dispute Tribunal sitting in Nairobi to challenge the Respondent’s decision to separate her from service with compensation *in lieu* of notice and termination indemnity. This disciplinary measure was imposed on her following a finding of misconduct. It is the Applicant’s case that:
  - a. The facts on which the sanction is based have not been established;
  - b. Her conduct did not amount to misconduct; and
  - c. The disciplinary measure was disproportionate.
3. On 15 June 2023, the Respondent replied to the application.
4. Following assignment of this matter to the undersigned Judge, the Registry notified the parties that the presiding Judge wished to set it down for an oral hearing.
5. The Tribunal heard the Applicant and her two witnesses on 17 and 18 October 2023.
6. The Tribunal then adjourned proceedings to consider whether there was sufficient evidence on the record for adjudication of this matter.
7. On 19 October 2023, the Applicant filed a motion for additional witnesses to be called. Specifically, the Applicant submitted:

9. The Applicant respectfully requests that the Tribunal issue an order directing the Respondent to identify three (3) individuals who possess the requisite knowledge and experience in relation to the process of approving and granting dependency allowances and in the UMOJA system. Furthermore, it is requested that the Respondent be instructed to promptly apprise this esteemed Tribunal of the prospective expert[s]' availability for testimony. The Tribunal shall then exercise its discretion in selecting a qualified expert from amongst these candidates to testify on the aforementioned technical matters.

8. The Respondent responded to the motion and objected to it being granted. The Respondent took the position that:

4. It is neither relevant nor material how the UN human resources management tool Umoja works. The crux of the matter is that the Applicant applied for a benefit for which she was not entitled due to her ineligibility under the applicable rules. Any expert witness on the functionality of Umoja would not be suitable for determining the Applicant's eligibility or lack thereof, and consequently for the substantiation of any defense that could possibly make a difference to the outcome of this case.

...

8. Moreover, this motion is an unsubstantiated and impermissible fishing expedition. The Applicant does not provide a precise fact which she wants to establish with the additional evidence. The reference to "*obtaining a comprehensive understanding*" reveals that the motion is not directed to providing evidence on a material fact. This should be rejected.

9. On 30 October 2023, the Tribunal ruled in Order No. 165 (NBI/2024) that "additional evidence on the relevant human resources processes at issue in this case is necessary for the Tribunal's understanding of the dispute being adjudicated. The Tribunal is also interested in the process leading up to the Applicant being investigated and the investigation itself".

10. The Tribunal directed the Respondent to “produce a witness with the requisite human resources and [Umoja] expertise on dependency benefits, as well as a witness with direct knowledge of the processing of the Applicant’s claim for dependency benefit” and “the Investigator of the Office of Internal Oversight Services [(“OIOS”)] whose report formed the basis of the impugned decision”. Both these witnesses were heard on 7 and 8 November 2023.

11. The parties filed their closing submissions as directed on 19 October 2023.

### **Facts and Submissions**

12. The Applicant gave birth to her second child, Yoan Garba, on 28 August 2017. The child’s father, Mr. Garba, was at the time of his birth and until 2020, also a staff member at MONUSCO. Having never lived with nor married Yoan’s father, the Applicant was, for all intents and purposes, a single mother.

13. The father was formally registered as Yoan’s father at birth, and the birth certificate showed as much. As part of the process of registering the birth of a child with MONUSCO, the Applicant provided the Mission with the original birth certificate. It listed both parents’ names and indicated that they were employed by MONUSCO.

14. The Applicant registered the birth of Yoan on 20 February 2018 and submitted her claim for dependency benefits on 22 February 2018.

15. The process of registering the birth of a child requires the Human Resources section of the Mission to certify the original birth certificate. The Applicant gave Mr. Garba a copy of the certified birth certificate and informed him that she had registered the birth of Yoan and submitted a claim for dependency benefits.

16. The Applicant began receiving dependency benefits in March 2018.

17. On 27 June 2018, Mr. Garba submitted his claim for dependency benefits in respect of the same child using the certified copy of the birth certificate that the Applicant gave him. He did not tell the Applicant that he was going to do this, nor that he had done it.

18. Between July 2018 and 30 June 2020, when Mr. Garba left the Organization, both he and the Applicant were being paid a dependency allowance in respect of their son Yoan Garba.

19. Mr. Garba's separation from the Organization did not affect the payment of the benefit to the Applicant. From 1 July 2020, therefore, she was the sole recipient of the entitlement.

20. On 18 November 2020, the Applicant submitted a claim for special dependency allowance and special education grant following a formal determination indicating that it was warranted.

21. In the process of verifying the records for the processing of this entitlement, Human Resources noticed that the dependency allowance had been paid for the same child to *two* staff members at the Mission.

22. On 23 November 2020, the matter was reported to the Office of Internal Oversight Services as possible misconduct and an investigation was triggered.

23. On 7 December 2020, the Organization informed the Applicant that she was in receipt of a benefit that she was not entitled to and proceeded to recover USD2,076.25 from her salary that month. It is the Applicant's contention that this is when she became aware that Mr. Garba had also submitted a claim for and received the dependency benefit in respect of their son.

24. On 31 August 2021, OIOS completed its investigation. As per the investigation report, “the established facts constitute reasonable grounds to conclude that the Applicant failed to observe the standards of conduct expected of United Nations civil servants”.

25. On 18 November 2022, the Director, Administrative Law Division, Office of Human Resources (“OHR”), sent allegations of misconduct to the Applicant. The Applicant was charged with violating staff regulation 1.2(b), staff rules 1.5(a) and 1.7, and secs 1.13 and 1.15 of ST/AI/2018/6 (Dependency status and dependency benefits), in the following terms:

In particular, it is alleged, between August 2017 and June 2020, you received child dependency allowance for your son, Yoan Garba, even though your son’s father, Mr. Garba, who was the highest paid staff member, was also receiving child dependency allowance for Yoan Garba at the same time.

26. On 23 January 2023, the Applicant responded to the allegations.

27. On 13 February 2023, the Assistant Secretary-General for Human Resources issued a Sanction Letter informing the Applicant that she was to be separated from the service of the Organization with compensation *in lieu* of notice and with termination indemnity. Annex 1 to the Sanction Letter detailed the grounds for the impugned decision as follows:

a. By submitting a claim for a dependency benefit for, and by receiving dependency benefit payments to which she was not otherwise entitled, [the Applicant] failed to show the requisite truthfulness and honesty in a matter affecting her status, and to exercise reasonable care for the assets of the [Organization]. Thus, [the Applicant] violated Staff Regulation 1.2(b) and Staff Rule 1.7.

b. By certifying the accurateness of an otherwise inaccurate form, and by submitting the dependency benefit claim, [the Applicant] has failed to abide by her duty of accurate self-certification. She has also falsely declared that she met the eligibility criteria for the receipt of a dependency benefit, when in fact she did not. Thus, [the Applicant] violated Section 1.13 of ST/AI/2018/6.

28. The Applicant was notified of the sanction on 16 February 2023 and separated on the same day.

29. It is the Applicant's case that the facts on which the sanction was based have not been established, and that what was established was not tantamount to misconduct under the Staff Regulations and Rules.

30. The Respondent's position that the Applicant was not eligible for the dependency benefit in respect of Yoan Garba because the child's father was also a staff member must be assessed in context, the Applicant argues. The Respondent appears to have concluded that the child's father is alone entitled to the allowance because he was in the higher pay bracket. In so concluding, the Respondent appears to have ignored the fact that the Applicant had sole custody of the child and was not being supported by the child's father in his upbringing or expenses. What is on record by way of "support" is three bank transfers by Mr. Garba to the Applicant in 2017 prior to the birth of the child.

31. Indeed, Mr. Garba's eligibility for the allowance was never properly scrutinised. He did not live with the child and was not providing "main and continuing support" as required by ST/AI/2018/6. This was clearly borne out by his testimony, that of the Applicant, and the Human Resources expert called by the Respondent at the Tribunal's behest.

32. The Applicant contends that the Respondent is unlawfully shifting the blame for its own lack of due diligence onto the Applicant. Nothing in the Applicant's conduct suggests the lack of integrity that she was accused of and sanctioned for.

33. The Respondent insists that this case is not about the Organization's exercise of due diligence. It is simply about the Applicant's lack of integrity in that she submitted a claim for an allowance that she was clearly not entitled to, which action is tantamount to misconduct. He contends that:

Mr. Garba was the only staff member entitled to apply and receive a dependency allowance for his child with the Applicant. The regulatory framework does not provide for a “first come, first served” approach towards the parents’ applications for dependency benefits. Neither does it provide for arrangements under which one parent can waive their entitlement to these payments for the benefit of the other. Rather, Section 1.6 of ST/AI/2018/6 provides unambiguous clarity on the exclusive eligibility of the higher salaried parent for the dependency benefit. No discretion may be exercised in respect of this eligibility criterion, unless provided for in ST/AI/2018/6. To read an exception where none exists would amount to an impermissible modification of the applicable legal framework, and thus constitute an error in law.

34. The Applicant failed the integrity standard when she certified the submission of her claim and attested to “understanding and meeting the eligibility criteria for the requested benefit”.

35. The Respondent further argues that the role of other staff members in the approval process does not “alter the fact that the Applicant had committed misconduct when she, in the first place, submitted an application claiming a benefit for which she was not eligible”.

36. In the circumstances of this case, the Respondent submits that there was clear and convincing evidence of the misconduct alleged against the Applicant, and that the resultant sanction imposed on her was wholly proportionate.

## **Consideration**

### *Standard of Judicial review in disciplinary cases*

37. Under the newly promulgated (December 2023) art. 9(4) of the UNDT Statute, in reviewing disciplinary cases, the Dispute Tribunal is required to consider the record assembled by the Secretary-General and may admit other evidence to make an assessment on whether the facts on which the disciplinary measure was based have been established by evidence.



38. This provision was amended to reflect the established jurisprudence of the United Nations Appeals Tribunal (“UNAT”). UNAT has consistently held that when reviewing disciplinary decisions, the role of the Dispute Tribunal is to ascertain whether:

- a. The facts on which the sanction is based have been established;
- b. The established facts qualify as misconduct;
- c. The sanction is proportionate to the offence; and
- d. The staff member’s due process rights were respected.<sup>1</sup>

39. When reviewing the Secretary-General’s discretion in administrative matters, the Dispute Tribunal will determine if the decision is legal, rational, procedurally correct, and proportionate. It can also see if relevant or irrelevant matters are considered, and if the decision is unreasonable or illogical. However, it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to it. Nor is it the role of the Tribunal to substitute its own decision for that of the Administration.<sup>2</sup>

40. During this process, the Tribunal is not conducting a merit-based review, but a judicial review. Judicial review is more concerned with examining how the decision-maker reached the impugned decision and not with the merits of the decision-maker’s decision.<sup>3</sup>

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<sup>1</sup> *AAC* 2023-UNAT-1370, para. 38; *Miyzed* 2015-UNAT-550, para. 18; *Mahdi* 2010-UNAT-018, para. 27; *Haniya* 2010-UNAT-024, para. 31; *Samwidi* 2010-UNAT-084, para. 43; *Masri* 2010-UNAT-098, para. 30; *Portillo Moya* 2015-UNAT-523, paras. 17 and 19-21; *Ibrahim* 2017-UNAT-776, para. 48; *Mbaigolmem* 2018-UNAT-890, paras. 15-16; *Nadasan* 2019-UNAT-918, para. 38.

<sup>2</sup> *Arvizu Trevino* UNAT-1231, para. 50; *Samwidi* 2010-UNAT-084, para. 40.

<sup>3</sup> *Arvizu Trevino* UNAT-1231, para. 51.

41. In disciplinary cases, when termination is a possible outcome, it requires sufficient proof. UNAT has ruled that the Administration is required to prove the alleged misconduct with clear and convincing evidence, which indicates that the truth of the facts asserted is highly probable. This standard of proof “requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt—it means that the truth of the facts asserted is highly probable”.<sup>4</sup> This implies that the asserted facts are highly likely to be true. UNAT further clarified that clear and convincing evidence could either be “direct evidence of events” or “evidential inferences that can be appropriately drawn from other direct evidence”. In this context, the Administration is responsible for proving that the alleged misconduct, which led to disciplinary action against a staff member, indeed occurred.<sup>5</sup>

*Whether the facts on which the disciplinary measure is based have been established*

42. In Order No. 127 (NBI/2023), issued on 7 August 2023, the Tribunal directed both parties to submit a consolidated list of agreed and disputed facts in chronological order. This list was to make specific reference to each individual event in one paragraph in which the relevant date was stated at the beginning.

43. In their joint written submissions dated 18 August 2023, both parties presented a list of agreed facts to the Tribunal.

44. The facts presented in the subsequent paragraphs are undisputed between the parties.

45. In 2014, the Applicant met Mr. Patrick Cyrille Garba, in Lubumbashi, Democratic Republic of Congo, and entered into an intimate relationship with him. The Applicant and Mr. Garba moved to Kinshasa and continued their relationship but did not get married or live together.

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<sup>4</sup> *Molari* 2011-UNAT-164, para 30.

<sup>5</sup> *Karkara* 2021-UNAT-1172 para 51; *Nsabimana* 2022-UNAT-1254 para 62; *Turkey* 2019-UNAT-955.

46. On 28 August 2017, the Applicant gave birth to their son, Yoan Garba. Both parents were MONUSCO staff members at the time. The Applicant serves as an Associate Judicial Affairs Officer, NO-B grade, at the Justice Support Section of MONUSCO in Kinshasa, DRC, under a fixed-term appointment. Mr. Patrick Cyrille Garba, served as a P-4 staff member in the Disarmament, Demobilization and Reintegration Section of MONUSCO before leaving the Organization on 30 June 2020.

47. From the time of Yoan Garba's birth until Mr. Garba's separation from the Organization in June 2020, Mr. Garba was higher paid than the Applicant. The Applicant is a mother to two children: Adrielle Masangu, born on 27 March 2010 from another father, and Yoan Garba, born on 28 August 2017. His father, Mr. Garba, while being the biological parent, has not lived with or been married to the Applicant. Since his birth, Yoan has been in the exclusive custody of his mother. On 20 February 2018, the Applicant had the original birth certificate of Yoan Garba validated by the Organization. The birth certificate lists the Applicant and Mr. Garba as the parents of Yoan Garba and indicates "Agent MONUSCO" as the profession for both parents of Yoan Garba.

48. On 21 February 2018, the Applicant provided Mr. Garba with a certified duplicate of their son's birth certificate.

49. On 22 February 2018, the Applicant declared the birth of her son to the Organization and submitted a dependency benefits questionnaire for Yoan Garba and her older child, claiming dependency benefits for Yoan Garba effective from his date of birth, 28 August 2017.

50. On 23 March 2018, the Applicant started receiving a dependency allowance calculated retroactively from the date of Yoan's birth.

51. On 27 June 2018, using the verified birth certificate copy given to him by the Applicant, Mr. Garba submitted a "Request for Change in Dependency Status/Marital Status" in respect of the same child (Yoan).

52. As a result, Mr. Garba started receiving dependency benefits for Yoan for the period through to 30 June 2020, with retroactive effect from the Yoan's date of birth.

53. In September 2019, the Applicant's relationship with Mr. Garba ended.

54. On 30 June 2020, Mr. Garba resigned and separated from the Organization.

55. Until 30 June 2020, both the Applicant and Mr. Garba received concurrent dependency benefit payments effective from the date of Yoan Garba's birth.

56. Following Mr. Garba's departure from the Organization, the Applicant became the sole recipient of the dependency benefits for Yoan.

57. On 18 November 2020, the Applicant requested a special dependency allowance and a special education grant for Yoan due to language and psychomotor challenges. During the review of her application, it was discovered that both the Applicant and Mr. Garba had been receiving dependency allowances for Yoan from August 2017 to 30 June 2020.

58. On 7 December 2020, the Organization notified the Applicant that overpayments had been made to her because only Mr. Garba was entitled to the dependency allowance while they were both serving with the Organization.

59. At the end of December 2020, when processing the Applicant's December 2020 salary, the Organization recovered USD2,076.25 from the Applicant, which corresponds to the amount of dependency allowance paid to her for the period of August 2017 to June 2020.

60. After examining the case, the Tribunal has confirmed that the facts outlined in the preceding paragraphs are mutually accepted by both the Applicant and the Respondent. As these facts are not contested by either party, there is no need for additional verification or substantiation through evidence from either side. Consequently, these facts are officially accepted as established and agreed upon by

both the Respondent and the Applicant. Given these admissions regarding the facts that led to the disciplinary action taken by the Administration, the Tribunal has confirmed the credibility of the facts underpinning the sanction. This determination was made without the need for further substantiation or analysis of the case based on the evidence provided by the parties.

61. Therefore, the Tribunal concludes that the facts on which the sanction is based have been established.

*Whether the established facts qualify as misconduct*

Scope of the case: the allegations against the Applicant

62. As per the investigation report, the Applicant is alleged to have:

Engaged in an entitlement fraud by claiming for and receiving dependency benefits for her child from August 2017 to June 2020 while at the same time the child's father also received duplicate payment for dependency allowance of their child. The Applicant claimed the dependency benefit of her child, even though she is aware of the conditions of the entitlements regarding these benefits being that Mr. Garba was the parent entitled to receive these benefits. The findings of the investigations say the established facts constitute reasonable grounds to conclude that the Applicant failed to observe the standards of conduct expected of United Nations civil servants.<sup>6</sup>

63. The subject of the investigation report refers as "Investigation Report on Entitlement Fraud by a Staff Member at the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (Investigation Division Case No.1147/20)".<sup>7</sup>As per the sanction letter, the Applicant is alleged to have been untruthful and dishonest in her behaviour:<sup>8</sup>

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<sup>6</sup> Annex R/2 to the Respondent's reply, Investigation Report of 31 August 2021, see secs. I, VII, and VIII.

<sup>7</sup> Annex R/2 to the Respondent's reply, Investigation Report of 31 August 2021.

<sup>8</sup> Annex 4 to the application, Sanction letter dated 13 February 2023, page 5, paras 9 and 10.

By submitting a claim for a dependency benefit for, and by receiving dependency benefit payments to which she was not otherwise entitled, the Applicant failed to show the requisite truthfulness and honesty in a matter affecting her status, and to exercise reasonable care for the assets of the Organizations. Thus, the Applicant violated Staff regulation 1.2 and Staff Rule 1.7 b. by certifying the accurateness of an otherwise inaccurate form, and by submitting the dependency benefit claim, the Applicant has failed to abide by her duty of accurate self-certification. She has also falsely declared that she met the eligibility criteria for the receipt of a dependency benefit, when in fact she did not. She is alleged for providing false information to the Organization. Thus, the Applicant violated Section 1.13 of ST/AI/2018/6 and that she would be separated from service with compensation in lieu of notice and with termination indemnity.

Applicant's submission

64. The allegations of entitlement fraud cannot be sustained, and the sanction letter recklessly disregarded whether the alleged facts constitute fraud.

65. In the case at hand there is clearly a lack of *mens rea*. The Respondent failed to provide any evidence to substantiate the contention that the Applicant unlawfully made any misrepresentation or had any intent to defraud or deceive when submitting her request. She did not knowingly misrepresent or submit falsified documents. She genuinely believed that she was the only one claiming the dependency allowance and that it was fairly done. She had no intent or knowledge of committing any wrongdoing when submitting the claim. She did not conceal any information. She provided Mr. Garba with a copy of the birth certificate with the Human Resources Section verification's seal. She submitted a birth certificate containing the names and occupation of both parents. She did not lie while filling her Questionnaire on Dependency Status (Form P84) as she wrote that she was single, and logically and truthfully answered "N/A" when asked after "is your spouse a UN common system staff member?"<sup>9</sup>

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<sup>9</sup> See Annex R/2 to the Respondent's reply, Investigation Report of 31 August 2021, para. 19.

66. As no misrepresentation was made, there was no intention to defraud. The elements of fraud were not established by clear and convincing evidence as required in *Asgar* 2020-UNAT-982. There is no evidence to establish that she was untruthful.

67. The Applicant vehemently denies having violated staff rule 1.2(b), staff rules 1.5(a) and 1.7 and secs 1.13 and 1.15 of ST/AI/2018/6 or any other fundamental rule.

#### The witnesses' testimonies

68. The parties called six witnesses to testify at the hearing. Over the course of 16, 17, and 18 October 2023, the Tribunal conducted the initial hearing of the case. During it, the Tribunal examined and cross-examined three witnesses, specifically the Applicant, and her two witnesses: Mr. Alain Mabushi, and Mr. Patrick Cyrille Garba.

69. In November 2023, the Tribunal heard the testimonies of the remaining three witnesses. These were Mrs. Esther Ofumbi Luganda, Mr. Paul Simon Harty, and Mrs. Nichole Otondi.

70. During the investigation, OIOS interviewed some of these witnesses, and their interview transcript is part of the case record. The testimony of these witnesses, in its most relevant parts, will be examined below.

#### *The Applicant*

71. The Applicant began her testimony by introducing herself as Marie Rose Bangambila, a 45-year-old woman currently unemployed. She told the Tribunal that she has served as a Human Rights Assistant and a Legal Officer in the 13 years that she worked for the United Nations. As a trained lawyer admitted to the Bar of Lubumbashi, her duties included implementing justice reform and training magistrates.

72. When she joined the United Nations, she was single and expecting her first child. She met Mr. Patrick Cyrille Garba in Lubumbashi, DRC, and they started a relationship. She described their relationship as a free and consensual union, but they maintained separate residences and never lived together.

73. In her testimony, she explained that their relationship ended around September 2019. By then, their son, born in August 2017, was two years old. Despite the relationship with Mr. Garba, she single-parented their child Yoan.

74. The birth certificate of their son, issued by the hospital as per DRC regulations, lists Patrick Cyrille Garba as the father and Marie Rose Bangambila as the mother. At the time of their son's birth, both were working as officers for MONUSCO. Yoan's birth certificate says as much.

75. Her son has always lived with her and never with Mr. Garba. Mr. Garba provided some financial support for their son, but it was irregular. She applied for the dependency allowance when she returned to Kinshasa.

76. She returned to Kinshasa in November 2017, and declared the birth of her child in February 2018. When asked why she waited six months to declare the birth of her child, she explained that her health condition at the time did not permit her to do so earlier. She gave birth in Lubumbashi to be near her family. The birth was challenging, requiring a caesarean section. Her child also had health issues and needed resuscitation at birth. She requested additional rest time from her supervisor and team to recover.

77. Regarding the question about her familiarity with the Rules and Regulations of the Organization, the Applicant conceded that she was not entirely familiar with it except in so far as it concerned her role in the Mission.



78. The Applicant confirmed that she filled out form P84 herself. When asked why she did not mention Patrick Garba on form P84, she explained that she did not because they were not married to each other. The form asks for personal information of the *spouse*. She stated that she was single, which she is. She mentioned her two children but did not provide details about their fathers, other than their last names.

79. On 4 February 2018, she received a dependency allowance of USD37.58 for her child. This increased to USD115 on 4 March 2018. She believed this was for one child only, as there may not have been adjustments made since his birth.

80. The Applicant testified that she was unaware that Mr. Garba had also submitted a claim for dependency allowance for Yoan. He, however, was well aware that she had registered the birth of the child and claimed dependency allowance because she told him when she put the paperwork in.

81. After the discovery of the double payment for the allowance, monies were deducted from her salary equivalent to what she had received as an allowance. This was all paid by her. She complied with what needed to be done. She was unaware of the actions of Yoan's father, so the Organization deducted what was necessary.

82. Her son currently lives with her and has always done so. She has always single-parented him.

83. Yoan was born on 28 August 2017. In cross-examination, the Applicant was presented with a bank receipt for a transfer of USD2,400 from Mr. Garba to her on 18 August 2017, before the birth of her son. On 26 September 2017, Mr. Garba transferred USD1,500 to her. There is another bank transfer receipt for a transfer of money from Mr. Garba to her, in the amount of USD400, dated 10 October 2017. She has thus received three money transfers between August and October 2017 totalling USD4,300.

84. The Applicant explained the context of these transfers to her. The first transfer was the return of a loan that he owed her. It was her money. The USD1,500 was to cover maternity health care costs for both the Applicant and Yoan. The USD400 was sent to her with no particular purpose. She cannot say whether it was for the care of Yoan or not. While it would be logical to assume that it was for his care, it is also reasonable to expect that one contributing to the care of one's child would be consistent about it. In this case, the Applicant did not receive support that she could count on for the care of Yoan. She was solely responsible for the care of Yoan.

85. Mr. Garba helped with the cost of delivery because, although insured as a staff member, the Applicant did not have enough to bear the cost of the delivery upfront. Reimbursements from the insurer can take some time. As this was a difficult delivery both for her and the baby, she needed more money than she had to cover hospital costs.

86. The Applicant and Mr. Garba had agreed that she would have exclusive custody of Yoan and that she would be solely responsible for his care. Mr. Garba was, at the time, and still is married and has other children.

87. Section 1.6 of ST/AI/2018/6 describes the eligibility criteria for claiming and receiving a dependency allowance for a child. The Applicant confirmed that she was never married to Mr. Garba and that, as such, she was never divorced or legally separated from Mr. Garba. The Applicant told the Tribunal that she was unaware that in cases where both parents are employed by the Organization, the benefit is payable to the higher earner of the two. She assumed that either parent can submit a dependency allowance application and, as the child was in her sole custody and care, she acted as she did when submitting the paperwork in respect of her firstborn child. The Applicant also told the Tribunal that she did not know that Mr. Garba was the entitled staff member in this case. Had she known or had he told her, she would not have submitted the request. Although Yoan's birth certificate clearly indicated that the child's father was a staff member of the United Nations, the Human Resources Officer processing her submission likewise never said anything about that rule to her.

88. The Applicant emphatically told the Tribunal that she had no intention of flouting the Rules and Regulations of the Organization. She simply did not know that she was submitting for an entitlement that she did not have. It was only when the investigation into her conduct commenced, that she became aware of the provision of ST/AI/2018/6.

89. Similarly, the Applicant was also not aware of her entitlement to a single parent allowance per staff rule 3.6(a)(iii) and sec. 4 of ST/AI/2018/6. She has therefore not claimed it in respect of either of her children.

90. The Respondent asked the Applicant in cross-examination whether custody was *legally* shared with Mr. Garba or whether there was a Court Order granting the Applicant sole custody. The Applicant told the Tribunal that Mr. Garba did not have legal custody of the child and that there was no Court Order. The decision for her to have sole custody and care of Yoan was a mutual one made by the two parents.

91. The Applicant testified that not only were she and Mr. Garba never married, they also never cohabited. Even while they were in a relationship, they rarely ever spent the night at each other's place. Custody was therefore never a subject of any real discussion. When she became pregnant, it was a given that she would keep and care for the child. She made most of all decisions in respect of Yoan on her own, without consulting his father.

*Mr. Alain Mabushi*

92. Mr. Mabushi has known the Applicant as his supervisee since 2017. They had previously served within the same section but in different duty stations so never met. He testified that he knew the Applicant to be a conscientious worker, and a woman of integrity.

93. The witness also testified that while it was obvious that two staff members cannot simultaneously claim the same benefit, he too was not aware of the rules as to who can rightfully claim the entitlement.

94. When the Applicant explained her predicament with the Respondent to him, his advice to her was for her to simply tell the truth, explain the facts and why she did what she did. He knew she had two children and that she was not married but did not know anything about the fathers.

95. He further testified that the Applicant was shocked when she was informed of the allegations that she was being accused of entitlement fraud, when she did not know that she and Yoan's father were both being paid the same allowance.

96. The witness testified that while his relationship with the Applicant was strictly professional, he had no doubts about her honesty.

*Mr. Patrick Cyrille Garba*

97. This witness is Yoan Garba's father. He was, at the time of Yoan's birth, a professional staff member at MONUSCO. At the time he joined MONUSCO he was divorced. He worked in Disarmament, Demobilization and Reintegration and served at the P-4 level. He is now a private consultant for the Presidency of the Democratic Republic of the Congo.

98. He met the Applicant when they were both posted to Katanga. Their relationship began around 2014 and ended in 2019. Their son was born in 2017. They never lived together. Throughout their relationship, which was consensual, Mr. Garba was married. His wife and children lived in South Africa.

99. The witness testified that their son was born in Lubumbashi, and that the Applicant managed the delivery process and birth registration formalities entirely on her own. The witness did nothing more than acknowledge the child as his, so that the birth certificate issued stated as much. National law in the DRC requires the birth certificate to state the parents' occupations. Yoan's birth certificate, therefore, clearly indicated the witness' name and occupation as an employee of MONUSCO.

100. The relationship between the Applicant and the witness ended amicably. They occasionally kept in touch with updates about Yoan.

101. Yoan has never lived with him. He has occasionally visited him and the Applicant. There is no Court Order granting him custody of the child and the witness has never sought one and does not intend to. As Yoan's father, national law requires his consent before Yoan can travel. That has been the extent of legal formalities required of him. The care and custody of the child rests solely with the Applicant.

102. When he was asked about his submission for dependency allowance in respect of Yoan, the witness explained that the Organization's human resources system was migrating to Umoja at the time, and staff members were asked to submit/resubmit and update their paperwork on the new digital system. As part of updating his records, he submitted Yoan's birth certificate along with the rest of the documents. A colleague from the Regional Service Centre in Entebbe ("RSCE") helped him with the submission.

103. The witness further explain that this submission took place sometime in June 2018 when the situation in the DRC was volatile. He wanted to be sure that all his "dependents" were properly listed. He also explained that Yoan is listed in Umoja as Cameroonian, because that is what he would be by default as the witness is Cameroonian. Although not registered in Cameroon or as Cameroonian, like three of the witness' other children, any child born to a Cameroonian father is considered Cameroonian under Cameroonian law.

104. He concedes that he was confused between submissions for dependency allowance and education grant, as he was advised that the UN would pay for the education of up to six children.

105. The witness described the Applicant as “single” in status. He, on the other hand, has a wife and seven children including Yoan. As far as the witness is concerned, there was no question as to whether the Applicant and he were in a recognized or non-recognized marriage, as the Applicant was/is—quit simply—*single*.

106. He completed a form, which is P85, to request a change in dependency status. He filled it to update his data about Yoan. He did not update the marriage or personal status because there has been no change. He only added his child Yoan, and he added the name of the mother, Bangambila, Marie Rose (the Applicant).

107. When questioned about the entry in Umoja indicating that Yoan lives with him, he said that was a mistake by Human Resources. Yoan does not live, and never has lived, with him.

108. He provided Human Resources with some bank transfer documents to show that he is providing support. He sent them some documents, some transfer forms, including a Western Union form. On 18 August 2017, a transfer was made for USD2,400, to prepare for Yoan’s birth. In other words, he was already taking care of him before he was even born, it is linked to his son. He also sent USD1,500 on 26 September 2017. This was after the birth of the child. The third transfer was on 10 October 2017 for USD400. He has no records of any support between 2018-2020.

109. The witness told the Tribunal that the Applicant never told him that she had registered their child as her dependent and was claiming the dependency benefit. There was no need for her to tell him. She was a single parent to Yoan, and she registered her son as such. The child’s birth certificate clearly indicates who his father is and what his occupation is. The witness wondered why no one from Human Resources, whose job it is to process these documents, and who in fact verified the birth certificate as authentic, picked up on who the child’s father was at the time the Applicant was submitting documents in respect of Yoan. The birth certificate in this case clearly states that *both* Yoan’s parents work for the United Nations.

110. The witness told the Tribunal that there is no such thing as an application for the child allowance/dependency benefit. He has never had to *apply* for the benefit for any of his other children. Once registered as a dependent, with the requisite original documentation, the allowance/benefit is automatically paid. In the case of Yoan, the witness presented the document previously submitted by the Applicant *and* verified by Human Resources. You can see on it the name and signature of the Human Resources Officer who received and acknowledged it.

111. The witness stated that the Applicant is far better organized than him, so, at birth, she went and registered the birth of their child in Lubumbashi. He only did so when he came to Kinshasa after receiving advice from Human Resources and RSCE, that he had to update his file, and he did it on the phone with a colleague.

112. The witness is perplexed as to how this became a disciplinary issue. Nothing in the Applicant's submission was false or untrue, and when the fact of dual payment was realized, the Organization promptly recovered all that was paid to the Applicant in respect of Yoan.

113. In response to a question in cross-examination, the witness told the Tribunal that he did not assist the Applicant with her registration of Yoan as a dependent.

114. The witness emphatically insisted that the Applicant and he were neither divorced nor legally separated (for the purposes of sec. 1.7 of ST/AI/2018/6) because at no point they were married or legally partnered. The Applicant is a single mother, and that is how they—as Yoan's parents—intended it. There was no need for a Court Order to this effect because it was never in dispute. She is a single parent.

115. Umoja, as a system, had no way of ascertaining duplicate claims. The early days of the system were confusing, and the fact that National and International staff used different systems made it even more confusing.

116. Human Resources had every evidence that both Yoan's parents were staff members of the United Nations.

*Mrs. Esther Ofumbi Luganda*

117. This witness is a Human Resources Partner ("HR Partner") at the RSCE. She processes transactions in Umoja and has been in human resources in the United Nations for seven years. The role of an HR partner, she explained, is to process all transactions related to personal administration and entitlements in Umoja, including some aspects of time recording and travel.

118. Regarding the Applicant's dependency allowance, her role was to approve the requests when a new dependent is added to the system in Umoja. She described, as an example, how the Applicant submitted her dependency allowance application, walking the Tribunal through the process: The Applicant brought the birth certificate to the HR Partner in the office of the Chief of Human Resources. They looked at it, she did a photocopy, they verified it, and the HR partner signed on the duplicate copy confirming that what is on the original is actually what is on the photocopy, so they sign as seen and verified. Once that is done, she went into Umoja and filled in the relevant digital form. Then she attached the documents that were seen and verified by Human Resources before it is submitted to a work center for final approval.

119. As a Human Resources Officer, she is very familiar with the Rules, Administrative issuances and Regulations of the United Nations. Offhand, she is not familiar with what the dependency allowance issuance in force was in 2018 and its amendment. She would have to read through it.

120. A dependent child, she explained, is a child who lives with a staff member and that a staff member supports physically, emotionally, and financially. As long as the child is living with the staff member and is in the staff member's care, the staff member is entitled to a dependency allowance for his or her children at birth.



121. The process of submitting or claiming dependency allowance is the same for national and international staff. P84 and P85 forms are used for filling the particulars. When you are new, this form is given to you to fill in your name, the dependents you have or if you have a spouse. It is part of the package usually given to staff members when they are new. That is offline. It is not the one in the system. That form has all your details about your family, your spouse and yourself. Some staff members upload them in Umoja, but some do not. Human Resources is used to gather information that goes into a staff member's personal file where it is kept. The staff member keeps a copy and Human Resources also keeps a copy.

122. There is no difference between P84 and P85. The forms collect the same information. The witness is familiar with these forms and the process. Verification of the information, the witness told the Tribunal, is done by the Mission. In this case, the staff member fills it in, and it is reviewed by Human Resources at the Mission. The form was filled out by the Applicant herself. She testified that she is familiar with the Applicant's case.

123. As a Human Resources Officer, she cannot consider the Applicant's particular form inaccurate, because the Applicant filled it. Once the form is presented like this, you cannot say this is right or this is wrong. Here, the marital status is single. If the staff member is single, there is no need to put the father's details because the form says spouse information, meaning you are married.

124. The Human Resources Officer is supposed to assist or direct or inform staff members when they are filling this out and to provide them with information and explanation about what is expected from them.

125. When Human Resources receives an application for a dependency allowance for a child, it is its responsibility to check to see if someone is already receiving an allowance and to check if the requesting staff member is entitled to it. It is the responsibility of Human Resources and the approving HR Partner. She was the approving HR partner in the Applicant's case. She approved the request because the form indicated that the child was living with the staff member. Once the staff member checks that box, it certifies that the child is actually living with them.

126. However, she did not approve Mr. Garba's information when he submitted the request for the dependency allowance. She only handles the National staff. She does not know the Human Resources person who handled the International staff in this case. As a Human Resources expert, she would say that usually the parent with the higher pay grade is entitled to a dependency allowance when both parents are staff members. But when divorced or legally separated, sec. 1.7 (of ST/AI/2018/6) applies. For shared legal custody, sec.1.6 (of that administrative instruction applies).

127. When a staff member is divorced or legally separated from another staff member, the parent who has legal custody of the child or children will receive the dependency benefit. In the case of shared legal custody, sec. 1.6 shall apply. The Applicant's relationship with Mr. Garba could not be considered marriage because he was already married. Similarly, she cannot consider them as divorced or legally separated. Shared legal custody, in her opinion, is about parents sharing the responsibility of their child together. If someone is telling you like they have a shared legal custody for their child, that does mean they need to provide a legal document, like a Court Order, for Human Resources purposes or proof of financial support. The Applicant is Yoan's mother and her child Yoan was living with her.

128. The father, Mr. Garba, can request the benefit but since the child is not living with him, he has to have proof of financial support. In this case, staff members must certify that they provide main and continuing support to the child in an amount that is equal to or greater than the amount of the dependent child allowance.

129. In the case of the Applicant, the witness approved her request for dependency allowance. She does not know who verified the paperwork at the Mission. Before approving, she goes through the request sent through Umoja. She reviews if the staff member has filled the forms correctly, the start date, the date of birth, the marital status, and if the staff member has checked the correct boxes. She must review that first.

130. Then, the witness goes to Umoja to review if the child is not already recorded among the staff member's dependents. But for this case, after reviewing to make sure the form is filled correctly, she confirmed that this was not a previously recorded child by the Applicant. She goes through the forms that are attached, like the birth certificate and the P84 or any other document attached. Then she reviews if it is the correct date of birth or the correct names, and if the document was signed and verified by the receiving HR Partner/Officer.

131. The child was entered in a P85 by the father, Mr. Garba. He entered the name of the child, Yoan, and his birth date, and the name of the mother. If the child's mother name is not registered as a spouse, you could not know that she is connected with the child. For this case, the Applicant applied as a single parent. Unless she declares the father is a staff member of the Organization, there is no way for Human Resources Officers to know that the child is connected with the father.

132. Usually, there is a place where the staff member puts remarks in Umoja. However, the manual P84 form has no provision for remarks. In this case, the witness thinks that the Applicant uploaded the details on her P84 form into Umoja.

133. The witness acknowledged that the birth certificate in this case clearly listed both parents as staff of MONUSCO, and that that document was verified by Human Resources in MONUSCO.

134. The child's father did not provide proof of support that was current or continuous. The last statement he provided was dated October 2017, almost 10 months before he requested dependency allowance. Human Resources relied on these bank statements, which the witness considers to be old proof. The support must be continuous, even if the child is registered under him, he has to continue providing the support. You cannot rely on these documents to prove that he is supporting the child continuously. The witness told the Tribunal that Mr. Garba should have been required to provide more evidence of support. But Mr. Garba ticked a box to indicate that the child was living with him. Proof of continuous support is usually not required if the child is living with the parent. In this case, Yoan was not living with Mr. Garba.

135. After the Applicant submitted a request for dependency allowance in the Mission for her son, Yoan, the witness testified that her role was to process and approve the dependency requested by the Applicant through Umoja. The application was done by the Applicant herself through Umoja. She filled the form in Umoja through the employee self-service module.

136. The Applicant added a new dependent and on the same form requested dependency allowance. This request is usually done in one form. The birth certificate says: "Original seen and verified by HR on 20 February 2018 by Beatrice Koli, HRA". It is accompanied by a signature. The original birth certificate has been seen and verified by a Human Resources colleague. It is the staff member's responsibility to ensure that the information provided in Umoja is complete and accurate. The witness' role was to approve this application.

137. In Umoja there is no way to determine if the same child might have been registered as the child of a different staff member, unless the staff member declares it. The information pertaining to a child is always linked to a staff member. The witness was not sure if the Applicant submitted the relevant information through Umoja or using the physical form that she signed. What the witness saw and approved was the physical form that was completed by the Applicant, verified and signed by Human

Resources in the Mission. The witness assumes the Mission first verified the documents before any Umoja submission took place.

138. The witness testified that she was not contacted during the investigation.

139. The witness also testified that, in principle, the staff member with the highest salary is entitled to submit or claim a dependency allowance. However, this does not mean that the other parent is not entitled to submit a claim for dependency allowance. The witness testified that there are situations in which both parents mutually agree that the lower earning of the two will submit the claim for the benefit. In such situations, there is usually a signed document indicating the agreement between them.

140. If the parents were not on good terms to even discuss it and agree on that for different reasons, then the parent with the lower salary would claim the dependency allowance, given that the parent with the higher salary is not willing to apply for the dependency allowance.

141. The witness in her testimony explained that she did not know that the father of the child is a staff member. There were no remarks that the dependent child has a father who is also a staff member. You can only get this information if you are running a dependency allowance report. As a Human Resources person administering National staff, such a report is usually run every month. She handles National staff, so, of course, when she runs the National staff reports, it does not pick information pertaining to International staff.

142. Umoja does not have the capability to trace or prevent potential duplication of registration. However, if a declaration has been made in the remarks, it can be traced. If a staff member has previously registered a child, it may appear as a duplicate. During the approval process, staff members are required to add remarks, as there is a provision for this. For instance, a staff member can indicate if their spouse is also a UN staff member or if the father of the child is a UN staff member. There is a designated box

for adding these remarks. The responsibility of adding these remarks in Umoja lies with the staff member.

*Mr. Paul Harty*

143. This witness serves as the Chief of Investigations, OIOS. He is based in Goma, in the Democratic Republic of the Congo. He manages an investigation team. Although he is currently in Goma, at the time of the events in question, he was based in Uganda where his job was to manage and supervise the investigators.

144. He is familiar with the investigation relating to the Applicant. His role was to supervise, offer any advice, and oversee the final report that was written by the investigator. The final report of the investigation was issued with his stamp approval and then approved by the remaining chain of command of OIOS, as necessary.

145. The matter was reported to OIOS on 23 November 2020. It went through various stages and was formally authorized for investigation on 5 December 2020. OIOS received a report of possible misconduct and followed operational procedures when investigating the Applicant.

146. OIOS is supposed to collect facts during an investigation and those facts are reflected in the findings of the investigation report. OIOS found that the Applicant had a child in August 2017. OIOS found that the father of the child was Mr. Patrick Cyrille Garba. OIOS found that Mr. Garba was the staff at a higher rank and salary than the Applicant. OIOS found that the Applicant registered the birth of her son on 20 February 2018 and submitted the dependency benefit questionnaire for that son on 22 February 2018. OIOS found that Mr. Garba submitted his own dependency benefit application in June 2018. OIOS found that both parents were receiving dependency allowance for their shared child at the same time.

147. During the investigation, the Applicant did not deny that she had submitted the dependency benefit application in February 2018. The Applicant did not deny that Mr. Garba was at a higher rank and pay than her, nor that they were both being paid the benefit in respect of the same child for some months. The Applicant confirmed all the material findings of the investigation.

148. Similarly, Mr. Garba also confirmed all the material findings of the investigation. OIOS did not find any evidence to disprove any of its material factual findings. The witness told the Tribunal that this investigation was done in compliance with all applicable Rules, Regulations and processes, and all factual material findings derived from the investigation were confirmed by both the Applicant and Mr. Garba.

149. The witness testified that he was the supervisor of Mr. Elias Messaïke, who led the investigation but has since left the Organization. The witness is fluent in French. To conduct the interview in French, when interviewing the Applicant and other witnesses, Mr. Messaïke had had the assistance of two translators who were not part of his team of investigators.

150. When a matter is reported to OIOS, it goes into what they call their intake system, and then their Director of Investigations makes a decision on what will happen with that report. On this occasion, a decision was made that it will be investigated by OIOS. Therefore, it came to his team and he deployed Mr. Messaïke.

151. The conclusion of the investigation is that the Applicant made an application for dependency for her son; that she completed form P84 to make that application, and that form asks if her spouse is a staff member of the United Nations. She put non-applicable. It transpired that her partner was also claiming the dependency allowance at the same time and between certain dates; there were dual payments of the allowance, and the Applicant did not disclose that her partner, her spouse, was part of the United Nations system. The money was retrieved, he thinks, in December 2020 by the United Nations. The conclusion was that the Applicant should have disclosed that the father of the child was a United Nations staff member, who, as a senior staff member, was the only one

entitled to claim the allowance. The Applicant should not have made that claim for the child.

152. Regarding how many levels of approval a report drafted by an investigator needs, it comes to him and then it goes to, at least, another two layers after him. He reviewed the reports. The facts were straightforward. So other than perhaps tidying up the English, there were no problematic factual issues. It was mentioned in the investigation that both allowances were requested by and paid to the Applicant and Mr. Garba, but the investigation only concerned the Applicant. There was also a report prepared on Mr. Garba under a separate investigation, but he had left the Organization before the process concluded.

153. The witness testified that he himself receives dependency benefits. He submitted his application some time ago when he joined the United Nations and registered his dependents. At that time, Umoja was not in use, so he went through Human Resources, produced birth certificates, and made declarations. Now, every year, he makes a declaration in Umoja regarding his dependents. An HR Partner verified the birth certificate. The purpose of this process is for the staff member to declare a dependent to the United Nations, which triggers what they call the dependency allowance. He gets paid a certain amount each month for each child or dependent he has.

154. According to the investigator, the P84 form asks various questions about the staff member, his/her dependents, and spouse information. One aspect of that is whether the spouse is part of the United Nations common system. One of the questions is: "Is your spouse a UN common system staff member?" He found the Applicant's response to this question incorrect and inaccurate as she answered "N/A" (Non-Applicable). Mr. Garba and the Applicant were not married, but they were in a relationship as far as he understands.



155. He does not think OIOS has a definition of a spouse that he is aware of, but it would generally mean a partner, perhaps the father of the child, the other half of the relationship. He is not aware of there being a legal definition of spouse. He is not referring to the legal definition given to the word spouse by the law of Congo, where they are living. He is explaining the word spouse in everyday language, in ordinary language in terms of making a claim for a dependent child and that is in his view. He is, he said, approaching it from an integrity point of view and the question is asking about spouse information, the father of the child is a United Nations staff member, so his expectation would be that it would be disclosed.

156. He does not have the document in front of him, but he has some recollection of it. He is aware of the single parent definition in ST/AI/2018/6. He read sec. 4.1. of that administrative instruction as follows:

A staff member in the Professional and higher categories or the Field Service category whose personal status, as recognized by the Organization in accordance with ST/SGB/2004/13/ [...] is single, legally separated from a spouse, divorced.

157. He also read ST/SGB/2004/13/ Rev. 1 as follows:

The personal status of staff members for the purpose of entitlements under the Staff Rules and Staff Regulations of the United Nations will be determined by reference to the law of the competent authority under which the personal status has been established.

158. He has never questioned or researched the marital status of the Applicant in accordance with the Congolese law for the purpose of this case. In his opinion, the relationship between the Applicant and Mr. Garba could be classified as spousal.

159. He again read Umoja information of Mr. Garba, whereby Mrs. Sylvie Flore Njiki, born on 4 December 1969, is his spouse. The effective date of her being Mr. Garba's spouse is recorded as "1/11/2015".

160. In the investigation report, the relationship between the Applicant and Mr. Garba started in 2018 and ended around 2019. During cross-examination, the witness was asked if Mr. Garba, who is already married, could also be considered the Applicant's spouse. The witness responded as follows:

There wasn't any dispute between them that they were in a relationship and that was the issue. He was the father of the child, so it was very clear. The case was there was never any accusation that they were married. It was that he was the father of the child, and they were in a relationship was the issue, and that the Applicant should have disclosed that when she made the dependency claim.

161. Based on the fact that Mr. Garba is the father of the child and being in a relationship with the child's mother (the Applicant), the witness considered Mr. Garba to be the Applicant's spouse. The witness told the Tribunal that although the child lived with his mother (the Applicant), Mr. Garba was the entitled parent, as he is senior to the Applicant in grade.

162. The witness was then asked to read sec. 3.1(b) of ST/AI/2018/6, which reads as follows:

The staff member certifies that the staff member provides main and continuing support to the child in an amount that is equal to or greater than the amount of the dependent child allowance, except in child support cases, when it should be at least the amount of the court-ordered child support or the amount of the dependent child allowance received from the Organization, whichever is higher. Such self-certification must be supported by documentary evidence satisfactory to the Secretary-General, if a child:

163. The witness went through the investigation report to determine if Mr. Garba was providing the main and continuing support to the child. Mr. Garba was providing support to the Applicant, as evidenced by the record. The witness told the Tribunal that he does not know what is meant by "continuing support". Mr. Garba submitted his request for dependency allowance on 27 June 2018. The child was born on 28 August 2017. The first deposit for support was made on the 18 August 2017, which

is prior to the birth of the child. The next one was on 26 September 2017, and the third one was on 10 October 2017.

164. Although form P85 filled by Mr. Garba for dependency allowance allocation says the child was residing with him, the child was actually residing with the Applicant. The witness was cross-examined on the discrepancy between the Applicant's and Mr. Garba's records, both of which indicate that Yoan lived with them. The witness told the Tribunal that he was aware that the child was living with his mother, and wondered if the discrepancy is the result of incorrect data entry by the Human Resources Officer or Mr. Garba.

165. Both parties should have declared, as far as the witness is aware, that the other was a staff member of the United Nations. According to the witness, the violation committed by the Applicant is that she should have declared that the father of the child was a United Nations staff member. As part of the fact-finding investigation, they find the facts, and they would consider it certainly a lack of integrity, possibly fraud. Their conclusion is that she committed both fraud and misrepresentation. The conclusion of the investigation report is that there is sufficient evidence to prove that she committed fraud and misrepresentation.

166. He has seen the birth certificate of the child, Yoan, which is verified by Human Resources. He sees the signature at the bottom of the document. It reads as "Original seen and verified by HR on 20/02/2018 by Beatrice Koli, HR". Mr. Messaike, who was the investigator, did not interview Mrs. Beatrice Koli.

167. The witness was questioned on para. 21 of the investigation report, which reads: "supporting documentation, such as a certified copy of Yoan Garba's birth certificate, which should have accompanied [the Applicant's] P.84 form, could not be located by MONUSCO-HR (footnote omitted)". The witness could not explain why the document was not located as part of the investigative process.

168. The witness was then directed to para. 24 of the investigation report:

A certified copy of Yoan Garba's birth certificate was submitted with the P.85 form as well as bank records showing child support payments made to Ms. Bangambila (footnote omitted). The birth certificate was verified by Ms. Beatrice Koli, Human Resources Assistant on 20 February 2018 (footnote omitted). Ms. Koli told OIOS that she believed the Applicant had brought Yoan Garba's birth certificate to have it verified, which was two days prior to [the Applicant] completing her P.84 form on 22 February 2018 (footnote omitted). The [Applicant] later confirmed this (footnote omitted). A review of the birth certificate (in French) revealed that the [Applicant] and Mr. Garba's "profession" were listed as agent MONUSCO or MONUSCO staff (footnote omitted).

169. In the birth certificate, it was recorded that both are "agents" of MONUSCO, meaning they are working for MONUSCO. Ms. Koli denied this fact in her email from Ms. Koli to Mr. Elias, which the witness read into the record as follows:

Please note that on birth certificate only names are mentioned, not titles or parents' function. I could not know this information (indiscernible) that both parents are MONUSCO staff as you mentioned. I'm in charge of national staff, if staff come with certificates, I certify only documents based on originals with [Umoja]. It's the responsibility of staff to enrol their dependents (indiscernible) approved by RSCE.<sup>10</sup>

170. She stated at the first line that only names are mentioned, not title or parents' functions. This sentence is incorrect. The investigation did not go further to clarify or understand more or interview Ms. Koli for this, because the issue was that the Applicant did not disclose the spouse information in her P84.

171. In the witness' opinion, if the Applicant should declare Mr. Garba as a spouse, then Mr. Garba should declare her as a spouse as well, certainly the mother of the child. That is the whole point. Based on the mandate of OIOS, he is not allowed to make legal determinations, such as fraud. His job is a factfinder, he puts the facts together of what has been found. He testified that according to the legal framework, the legal

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<sup>10</sup> 8 November 2023 Oral Hearing Transcript, p. 36.

determinations with regards to disciplinary matters are made first by the Assistant Secretary General for Human Resources and, second, by the Under-Secretary-General for Management Strategy, Policy and Compliance.

172. The Applicant worked within MONUSCO. Her title was Associate Judicial Affairs Officer. That title did not appear on the birth certificate. Mr. Garba's title was likewise not listed. The Organization, the witness said, is not responsible for how the Congolese authorities input information in the birth certificates.

173. The witness stated that he believes a man can be considered a spouse if he is the father of a child, regardless of whether he is in a legal relationship with the mother. He maintains this view even if the man and the mother are not in a relationship. As long as the man is the child's father, he is seen as a spouse in the witness' eyes. Consequently, based on the documentary evidence, the witness concluded that the Applicant did not provide information about the spouse.

174. The Applicant failed to inform or did not notify the Organization that the father of the child was also a staff member. The witness read para. 39 of the investigation report as follows:

When OIOS asked Ms Bangambila if she ever notified the Organization that the father of Yoan Garba was a United Nations staff member, she said that on Yoan Garba's birth certificate, which she had verified by HR, it stated that Mr. Garba was MONUSCO staff (footnote omitted).

175. The witness disagrees with the Applicant's explanation. He insists that the responsibility lies with the staff member to make an honest and clear application. She did not declare spousal information on form P84, and it is not for the Organization to hunt around to find if the father of the child is a United Nations staff member. It is for the Applicant, for the staff member, to complete these forms with integrity. In this case, this led to a duplicate claim.

176. The witness also read para. 40(v) of the investigation report, in which OIOS found that:

The Applicant and Mr. Garba denied knowing that the other person claimed for and was receiving benefits for their son.

177. This, the witness testified, was borne out by the evidence.

*Mrs. Nichole Otondi*

178. This witness is a Senior Human Resources (“HR”) Officer. She leads the team responsible for the HR system functionality in Umoja. Her experience in HR has always been related to technical systems, ensuring they are fit for purpose. Within Umoja, she supports the policies in the Organization to ensure the system meets the Organization’s needs. From a technical perspective, she believes that HR partners should be familiar with the Rules and Regulations of the Organization because they implement those rules in their transactions.

179. She is familiar with the annual declaration form available in Umoja, including forms P84 and P85. However, the P85 form is not reflected in Umoja, as it was a manual form before the functionality was available in the system.

180. In 2018, even after the implementation of the annual dependency benefits review form in Umoja, an offline form was still available for staff members without access to a computer. In such cases, staff members would fill the paper form, and an HR practitioner would submit it in the system on their behalf. The annual declaration form in Umoja works by making a link available to staff members to submit it, as they need to declare the status of their dependents.

181. The physical form is intended only for cases where a staff member does not have physical access to a computer. It is expected that the form should be completed by the staff member as it is their declaration.

182. When it comes to the Umoja form, there are guides available for reference by the HR office. Umoja was deployed in MONUSCO for both International and Local staff. Local staff deployment was on 1 November 2016, and for International staff deployment was in 2015. The functionality for HR partners to approve and enter dependents into Umoja was implemented at Go Live, i.e., upon deployment of the functionality.

183. Just like the annual dependency benefit review, the P84 form, the claim for dependency offline form remains available, but it is to be used exceptionally when a staff member has no access to a computer. In those cases, the information submitted by the staff member should be reviewed by the HR Partner to confirm entitlement eligibility. She is aware that there is guidance on the various checks that an HR Partner should do to establish entitlement when a claim is submitted.

184. The importance lies in the information provided by the staff member to disclose if there may be another staff member who has already claimed dependency. There is no way to know about duplicate payments unless the staff member provides the right information. Generally, when an HR practitioner is working on that component, they already have the staff member's records, and they are working off an individual staff member. There are dependent reports available, but again, those generally start with the staff member as the source.

185. The P85 manual form is no longer in use except for emergencies. This form mentions adding new child's details to the dependency list of the staff members.

186. She noticed that Mr. Garba's P85 form indicates that the child lives with him. The Umoja record of Patrick Cyrille Garba also states that the child resides with him. If the form was filled out manually and then entered into the system by the HR Partner, the HR Partner would manually input those details if the manual form was what was submitted to HR. The system is configured to determine whether the staff member is then eligible for the child allowance. There are other fields that need to be completed, specifically, the financial dependence, which is highlighted. If the "living with staff

member” box is not checked, it means that the child does not live with the staff member and additional documentation would need to be provided. This falls within the expertise of the HR practitioners.

187. The witness testified that it was not possible for HR to determine if the child had previously been enrolled with another staff member. This is because the child is linked to the staff member, and there is currently no way for an HR Officer to search using the child’s name.

188. The Applicant filled her form out in the presence of an HR Partner. Despite having a relationship with the father of the child she marked herself as single and not married; spouse details are marked as not applicable. In this context, the witness confirmed that spouse information refers to a marriage or recognized relationship. If there is no marriage or recognized relationship, then there is no spouse.

189. In the form and in Umoja, there is no place or table other than spouse information to fill or mention if the father of the child is a staff member or not. There is no field in Umoja that contains information about the other parent of the child. This means that the child is recorded under the staff member who submitted the claim and is only linked to that staff member.

190. The witness also explained the difference between the P84 and P85 forms. The P84 is to claim dependency initially, and the P85 is to declare annually and update information. If you are already married, have your spouse mentioned in Umoja, and are receiving the dependency allowance for the spouse, then you cannot add another spouse in Umoja. Umoja recognizes only one spouse. One can have additional spouses, but only one can be recognized as a dependent. So, there is a concept of a non-recognized spouse, which means a spouse not recognized for the purposes of UN entitlements.



191. Umoja is an enterprise resource planning system where information related to all staff details regarding their benefits, entitlements, leave and attendance, payroll, and benefits is stored. It includes finance. There are many pillars to Umoja. It is an accounting system as well as a human resources' tracking system. Transactions include claims as well as personnel actions and other types of activity.

192. Regarding who inputs the information for the processing of entitlement claims, that depends on the entitlement. In the case of dependency, staff can enter it directly into Umoja through the Employee Self-Service ("ESS") module. If they do not have access to a computer or there are extenuating circumstances, they can complete manual forms and the information is entered on behalf of the staff member by either an HR administrator or by an HR Partner. Other entitlements, such as rental subsidy and danger pay, can also be claimed by the staff member directly through ESS in Umoja. Claims for other entitlements are submitted either in a different system or offline, specifically, Education Grants.

193. If the witness had a child, she would input that information in Umoja in one of two ways. She would either submit the information through ESS or reach out to her HR Partner. If, for some reason, she could not submit forms through ESS, she would get access to the forms that she would complete offline, and then submit them to her HR Partner outside of Umoja for the HR Partner to enter the information. But the standard practice is that she would enter it in Umoja through ESS.

194. It is the responsibility of the staff member to ensure that the information provided in Umoja is complete and accurate. When a staff member submits and claims for dependency, they also need to provide documentation. When the staff member submits, it does not automatically get recorded for payment of that entitlement. It is routed for review by an HR Partner to confirm that all of the relevant documentation as detailed in the applicable policy is reviewed to confirm that the staff member is eligible for that entitlement.

195. It is possible to declare the birth of a child and not claim a dependency entitlement. The child's information would be visible in the same way. Financial dependence would not be checked. Child records are linked directly to the staff member they are recorded against or under. Each child record in the system is linked to one staff member. If the husband of a staff member submitted a child to be recorded, even if not financially dependent, only then would it be recorded under his Umoja record. If he never recorded it, you would not see it under his profile. So, the child can only exist in both parents' profiles when both parents register the birth of the child in Umoja.

196. From a technical perspective, the witness explained that declaring a dependent and then requesting a dependency allowance for that person are two separate things, but they can occur simultaneously because the process for recording the child is the same as establishing the dependency entitlement. She clarified that the purpose of Umoja was not to prevent double payments among staff members.

197. During cross-examination, Counsel requested, and was granted, the Tribunal's approval to use her own Umoja account as an example to clarify how the system operates. With the Tribunal's permission, Counsel proceeded to question the witness, delving into the specifics of Umoja, including the submission of dependency allowances by staff, the registration of dependents, and the provision of additional information. The witness responded with comprehensive explanations, demonstrating the system's functionality using the Counsel's personal account displayed on the courtroom screen as an illustrative example.

198. The witness mentioned that the terms and conditions in the Umoja account indicate that submitting incomplete or false information or failing to provide complete and true information as may be requested later will result in the recovery of prior payments, discontinuation of future benefits, and/or other administrative steps that may include disciplinary action. Staff members certify that they have read and understand the terms, conditions, and implications of this submission and that all information submitted by them is complete and true.

199. The witness also mentioned that there is information provided by Human Resources to staff members when submitting applications in Umoja. Umoja has a frequently asked questions section related to, for instance: “what is a dependency allowance? Whom can I claim? What happens if I am married to another staff member?” There is information providing that when a staff member is married to or has a child or children with another staff member or a staff member of another Organization of the United Nations Common System, only one may claim dependency benefits for dependent children emanating from that relationship. The recipient of dependency benefits is the spouse having the higher salary level unless the contract type is temporary. Either or both spouses may claim dependency benefits for a secondary dependent.

200. The witness clarified that a staff member cannot declare the father of her child in Umoja unless he is a spouse. Unless they are married, they do not provide that information. She emphasized the need to be clear about the types of family members that can be recorded. There is a recognized spouse, which would require a legal relationship that is also verified, and there is a non-recognized spouse, but other than that, there is no other place to record the person in Umoja.

201. When staff members provide spouse information in Umoja, they are also required to register or upload the supporting documentation as proof of that relationship. For instance, they are required to register marriage certificates or any proof in that regard. Those would need to be reviewed. These supporting documents must be provided to establish a claim for an entitlement. If they failed to provide this evidence, they would not get the entitlements.

202. Any due diligence work in place or other mechanism of review to ensure that eligibility to an entitlement is verified before the benefit is paid is the responsibility of the HR Partner. When HR Partners receive the information, whether it is through Umoja or offline, they would then review it to establish dependency and confirm they have all the relevant information as provided by the staff member.

203. When a birth certificate is submitted to HR, it is also uploaded into Umoja. If the birth certificate indicates that the father of the child is a staff member, it should be reviewed by HR. If the birth certificate clearly states that the father's profession is a UN staff member, and HR is aware that the other parent is also a UN staff member, this information needs to be reviewed in some way. If this information is reflected on the birth certificate, and HR is aware of it, then they need to act on that.

#### Spouse information

204. The Respondent's key argument is that the Applicant was untruthful and provided inaccurate information on the P84 form. Despite the Applicant's spouse being a staff member of the UN, the Respondent argues, she answered "N/A" (not applicable) to the question regarding her spouse's UN employment.

205. The Applicant asserted she was single and truthfully responded "N/A" to whether her spouse was a UN common system staff member. The Respondent claims that the Applicant did not demonstrate the necessary honesty and truthfulness regarding her status. The Respondent strongly contends that the Applicant did not fulfil her obligation for accurate self-certification, as she misrepresented her marital status to the Organization to receive a dependency benefit to which she was not rightfully entitled.

206. In her testimony, the Applicant stated that she met Mr. Patrick Cyrille Garba in Lubumbashi, Democratic Republic of the Congo, in 2014. They began a close relationship and later relocated to Kinshasa. However, they did not marry or share a residence.

207. The Applicant, a mother of two, has a daughter named Adrielle Masangu, born on 27 March 2010, from a different relationship, and a son named Yoan Garba, born on 28 August 2017. Yoan's father is Mr. Garba, but he has never lived with or been married to the Applicant. Yoan has always been under the sole care and custody of his mother.

208. The Applicant in her testimony to the Tribunal also explained that she did not provide any spouse information because she does not have a spouse. She mentioned her two children but did not provide details about their fathers, other than their last names. In her testimony she confirmed that the data she entered on the form is accurate and in line with what was requested. She could not claim that Mr. Garba was with her because they are not legally married, which is a requirement for inclusion on the form.

209. In his testimony to the Tribunal, Mr. Patrick Garba stated that he and the Applicant were two consenting adults who decided to date. He was married and had a family living abroad. Throughout their relationship, he remained legally married, with his family residing in South Africa.

210. Mr. Garba stated that Mrs. Sylvie Flore Njiki is his legal spouse, as recorded in Umoja. He admitted to having a relationship with the Applicant from 2018 to 2019, during which they had a child, for whom he is the father. Both Mr. Garba and the Applicant concurred on these facts, including that they were never legally married, and he confirmed his marriage to Mrs. Njiki during the period of his relationship with the Applicant.

211. In her testimony, Mrs. Nichole Otondi, a Senior HR officer explained to the Tribunal that a spouse refers to a legally recognized relationship or marriage. Without such a relationship, there is no spouse.

212. Mrs. Otondi further clarified that a staff member cannot declare the father of a child in Umoja unless said father is a spouse. Information about family members is limited to recognized spouses, which requires a verified legal relationship, and non-recognized spouses. There is no provision in Umoja to record any other relationship.

213. Mrs. Otondi also explained that when staff members enter spouse information in Umoja, they must also upload supporting documents as proof of the spousal relationship, such as marriage certificates. These documents are subject to review and are necessary to establish a claim for entitlements. Failure to provide this evidence would result in the denial of entitlements.

214. The Chief of Investigations, OIOS, provided a testimony to the Tribunal that was different from the testimonies of the other witnesses.

215. In his view, Mr. Garba could be considered as the Applicant's spouse based on the fact that they were in a relationship and he is the father of her child. He believes that a man could be considered a spouse if he is the father of a child, regardless of his legal relationship with the mother. In declaring herself single, and not providing information about her "spouse", the witness found the Applicant to be untruthful and lacking in integrity. The conclusion of the investigation report was that there was sufficient evidence to prove that she committed both fraud and misrepresentation.

216. The testimonies of the first three witnesses, namely the Applicant, Mr. Garba, and Mrs. Otondi, present a consistent narrative that supports the Applicant's claim. They all confirm that the Applicant and Mr. Garba were in a relationship and had a child together but were never married.

217. On the one hand, the Applicant's testimony is particularly compelling. The Applicant convincingly testified that she filled out the P84 form herself, marking her marital status as "single" and "N/A" in the spouse-related sections, because she was not legally married to Mr. Garba, thus making him ineligible for inclusion. This aligns with Mrs. Otondi's testimony that a child's father cannot be declared in Umoja unless legally recognized as a spouse. The Tribunal found her testimony to be both credible and consistent with the written and oral evidentiary record.

218. Mr. Garba's testimony also supports the Applicant's claim. He confirmed that they were in a relationship and had a child together but were never married. He also stated that he was legally married to another woman during his relationship with the Applicant. This further reinforces the argument that the Applicant was correct in not declaring Mr. Garba as her spouse.

219. On the other hand, Mr. Harty's testimony seems to be based on a personal understanding of the term "spouse", which ignores the legal definition and standard practice meaning of the term. His assertion that the Applicant should have declared Mr. Garba as her spouse on the P84 form because they were in a relationship and because he is the child's father starkly contradicts the testimony that the Tribunal heard from Human Resources personnel.

220. Also, and not less important, Mr. Harty's personal "definition" of "spouse" defies common sense. What documentation would the Applicant have had to submit to show a spousal relationship? Would declaring Mr. Garba a spouse not have led to further claims of "fraud and misrepresentation" on the part of the Applicant?

221. The testimonies of the first three witnesses provide a consistent and credible account that supports the Applicant's claim, while Mr. Harty's testimony seems to be based on his rather alarming understanding of the term "spouse", which lacks corroborating evidence and legal support. The Respondent did not provide proof substantiating the existence of a marital relationship between the Applicant and Mr. Garba.

222. The Investigator's findings are clearly misconceived. The Tribunal is surprised that despite being assisted by a translator, and being himself fluent in French, the absence of the Applicant's and Mr. Garba's official titles in the birth certificate was used as a basis for discrediting the Applicant.

223. From a legal perspective, the term “spouse” typically refers to a partner in a legally recognized marriage. This definition is widely accepted across many jurisdictions and is also the standard practice within the United Nations. As Mrs. Otondi testified, spouse information pertains to a legally recognized relationship or marriage. Without such a relationship, there is no spouse. Furthermore, when staff members enter spousal information in Umoja, they are required to upload supporting documents as proof of the spousal relationship, such as a marriage certificate.

224. The Applicant and Mr. Garba were not legally married, and by UN standards, she is not considered his spouse. Consequently, she accurately filled out the P84 form as “single” marking “N/A” in the spouse information sections, reflecting her legal status according to UN practice.

225. Therefore, the data she entered on the form is accurate and in line with what was requested. Any claim that she provided inaccurate information about her marital status is not supported by the legal definition of a spouse or the standard practice of the United Nations. Thus, the evidence in the record of this case, including the testimonies of the witnesses, supports the Applicant’s argument.

226. Hence, the Tribunal dismisses the Respondent’s argument that the Applicant was untruthful and submitted incorrect spousal information on the P84 form.

Information about the child’s father

227. The Respondent also contends that the Applicant should have revealed that the child’s father was a staff member of the United Nations. As the higher-paid parent, only the father had the right to make a claim for dependency allowance, and the Applicant should not have done so for the child. The Applicant did not inform the Organization at the outset, when first applying for the dependency allowance, that the child’s father was also a staff member. The Applicant was not truthful in failing to disclose that the child’s father was a staff member of the United Nations.



228. However, Mrs. Esther Ofumbi Luganda, the HR Partner at RSCE who approved the Applicant's dependency allowance claim testified that she could not deem the P84 form filled by the Applicant as inaccurate, especially regarding the father of the child's information. Given that the Applicant's marital status is single, there is no requirement to include the father's details as the form requests *spouse* information. Therefore, there is no section on the form for the non-spousal father's information in the Applicant's situation.

229. According to the testimony of Ms. Ofumbi, typically, staff members can add remarks in Umoja. However, the physical P84 form does not have a section for remarks. Consequently, the Applicant, being single, cannot provide spousal information in the system, and cannot include the information about the father of the child on the form.

230. Ms. Ofumbi also testified that on the child's birth certificate, next to the parents' names, there's a section for "profession" (in French), where the job title of both the father and the mother is listed as "agent MONUSCO". This was verified by HR in MONUSCO.

231. Mrs. Nichole Otondi, a senior HR Officer, testified that both the P84 form and Umoja lack a section or table to include or mention whether the child's father is a staff member. There is provision for spousal information, but not for non-spouse fathers, and not for non-spouse fathers who are also staff members. The child is registered under the staff member submitting the information only. Ms. Otondi emphasized the need to be clear about the types of family members that can be recorded. There is a recognized spouse which would require a verifiable legal relationship.

232. Mrs. Otondi also testified that when a birth certificate is submitted to HR, it is uploaded in Umoja. If the birth certificate indicates that the father of the child is a staff member, it should be reviewed by HR. If the birth certificate clearly states that the father's profession is a UN staff member, and HR is aware that the other parent is also a UN staff member, this information should be reviewed in some way by the HR

Officer. If this information is reflected on the birth certificate, HR should be aware of it, and HR should act on that.

233. While Mr. Harty testified that the Applicant failed to inform the Organization that the child's father was a staff member, the investigation report confirmed otherwise. The Applicant told the investigator who questioned her that the birth certificate clearly indicates that the child's father is a staff member of MONUSCO and that the document was seen and verified by Human Resources. Paragraph 39 of the investigation report records as much.

234. The investigator's testimony confirmed para. 24 of the investigation report that a certified copy of Yoan Garba's birth certificate was submitted along with the P85 form, as well as bank records showing child support payments made to the Applicant. The birth certificate was verified by Ms. Beatrice Koli, a Human Resources Assistant, on 20 February 2018. Ms. Koli informed OIOS that she believed the Applicant had brought Yoan Garba's birth certificate for verification two days before she completed her P84 form on 22 February 2018. The Applicant later confirmed this. A review of the birth certificate confirmed that both the Applicant and Mr. Garba's professions were listed as MONUSCO agents or MONUSCO staff.

237. The birth certificate recorded that both parents were MONUSCO agents, indicating they worked for MONUSCO. The birth certificate was verified and signed by Ms. Beatrice Koli. However, Ms. Koli denied this in an email to Mr. Elias, which is part of the case record. She wrote:

Please note that on birth certificate only names are mentioned, not titles or parents' function. I could not know this information (indiscernible) that both parents are MONUSCO staff as you mentioned. I'm in charge of national staff, if staff come with certificates, I certify only documents based on originals with [Umoja]. It's the responsibility of staff to enrol their dependents (indiscernible) approved by RSCE.

238. Ms. Koli clearly erred in stating that the child's parents' professions were not indicated on the birth certificate. Despite this glaring error, the investigator never thought to question Ms. Koli further. The Tribunal finds this omission by the investigator to be both curious and negligent.

239. The testimonies of Mrs. Nichole Otondi and Mrs. Esther Ofumbi Luganda, both HR experts, are credible and consistent with the evidence presented in this case. Their professional expertise and their roles within the Organization lend weight to their testimonies.

240. Mrs. Otondi testified about the limitations of the P84 form and Umoja, both of which lack a section or field to include information about a child's father absent a spousal link between the child's parents. This testimony aligns with the evidence that the Applicant, being single, could not provide spousal information and could not include the information about her child's father as there was no section or field for it on the form.

241. Mrs. Luganda, an HR Partner at RSCE, testified that she approved the Applicant's dependency allowance claim. Her testimony corroborates the evidence that the Applicant did not withhold information about the child's father. Instead, the systems in place (P84 form and Umoja) did not provide an appropriate avenue for her to disclose it.

242. Furthermore, their testimonies are supported by other evidence on the record, such as the birth certificate, which clearly states the father's profession as a UN staff member, and was submitted and verified by HR. The investigation report also aligns with their testimonies, further strengthening their credibility.

243. The Tribunal finds that it cannot rely on the testimony of Mr. Harty, whose evidence was plainly and factually incorrect. His claim that the Applicant was untruthful in failing to disclose that the child's father was a United Nations staff member is contradicted by the evidence in the record, including the birth certificate and the limitations of the P84 form and Umoja as testified by the HR experts. The Tribunal finds that OIOS was not impartial in its assessment of the facts before it.

244. The Tribunal determines that the Respondent's claim of the Applicant being dishonest in not revealing that the child's father was a staff member of the United Nations is weak and unsound on multiple grounds.

245. The P84 form, which the Applicant filled out, only has a section for spousal information. As the Applicant is single and not married, she filled it out accordingly. The form does not have a section or field to include information about the father of her child in her circumstances. This is the information that was later uploaded to Umoja. Therefore, the Applicant was unable to disclose information about Mr. Garba, the father of her child, on the P84 form due to its design.

246. Furthermore, a staff member cannot declare the father of her child in Umoja unless he is her spouse. They do not provide that information unless they are married. The Applicant is not married to Mr. Garba. Hence, she was unable to disclose information about Mr. Garba, the father of her child, in Umoja.

247. The system needs to be clear about the types of family members that can be recorded. There is a recognized spouse, which would require a verifiable legal relationship, and there is a non-recognized spouse. Mr. Garba was neither to the Applicant. Beyond that, there is no other place to record the child's father in Umoja.

248. The birth certificate submitted by the Applicant clearly indicates that both parents were staff members of the UN at MONUSCO. This birth certificate was verified by Ms. Beatrice Koli, the HR Assistant in MONUSCO and was also uploaded in UMOJA.

249. The Tribunal can only conclude that the Applicant had indeed informed the Organization that Yoan Garba's father was a United Nations staff member.

250. The Respondent's submission that the Applicant should have revealed that the child's father was a staff member of the United Nations is unacceptable. The Applicant did not withhold this information. Rather, the systems in place (P.84 form and Umoja) did not provide an appropriate avenue for her to disclose it any more than she already had. The birth certificate, which clearly states the father's profession as a UN staff member, was submitted and verified by HR. The contention that she withheld information and displayed a lack of integrity is unsupported by the evidence.

251. Therefore, the Tribunal concludes that the claim that the Applicant was untruthful is unfounded and should be dismissed.

Did the Applicant know that Mr. Garba was also receiving a dependency allowance for their son?

252. The Respondent asserts that the Applicant, by applying for and receiving dependency benefits to which she was not entitled, failed to exhibit the required honesty and truthfulness in a matter impacting her status, and did not exercise appropriate care for the Organization's assets.

253. In assessing these allegations of dishonesty levelled by the Respondent against the Applicant, the Tribunal must ascertain whether the Applicant was aware that Mr. Garba was also receiving a dependency allowance for their son during the period she was receiving the allowance.

254. The Applicant testified that she was unaware of Mr. Garba's application for the benefit.

255. Mr. Garba confirmed the Applicant's testimony, stating that he did not inform her that he was claiming the allowance for Yoan. Therefore, she was unaware that he had also applied for it.

256. Mr. Harty, the investigator also testified that, there was no evidence proving that the Applicant was aware of the fact that Mr. Garba was also receiving dependency allowance for their son.

257. The Tribunal carefully examined the testimonies of the witnesses, the investigation report, and all other evidence in the case record for the determination of this issue as it is relevant in the Respondent's allegations that the Applicant was untruthful and dishonest.

258. The Applicant testified that she was unaware of Mr. Garba's application for a child dependency allowance, thus she could not have intentionally withheld this information.

259. Mr. Garba stated that the Applicant did not inform him that she was claiming the allowance for Yoan. He further stated that the Applicant was unaware of the dual payment. She did not know that he had also applied for the allowance. This corroborates the Applicant's claim of ignorance of Mr. Garba's application for the allowance.

260. Mr. Harty, in his testimony, stated that their investigation did not uncover any evidence to suggest that the Applicant was aware that Mr. Garba was also receiving a dependency allowance for their son.

261. In light of these testimonies and the lack of evidence proving that the Applicant was aware of Mr. Garba's dependency allowance, the Tribunal finds no element of untruthfulness in this regard.

#### Normative framework

262. As per the sanction letter, the Applicant is alleged to have been untruthful and dishonest by submitting a claim for and receiving a dependency benefit to which she was not otherwise entitled by the Rules and Regulations of the Organization.

263. In this case, determining child dependency benefits necessitates a thorough examination of the normative framework, including the existing Rules and Regulations of the Organization.

264. Staff rule 3.6 (see ST/SGB/2018/1/Rev.2) reads as follows in its relevant part:

**Dependency allowances**

**Definitions**

(a) For the purposes of the Staff Regulations and Rules:

...

(ii) A “child” is any of the following children for whom the staff member provides main and continuing support:

a. A staff member’s natural or legally adopted child; or

b. A staff member’s stepchild who is residing with the staff member; or

c. A child who cannot be legally adopted, for whom the staff member has legal responsibility and who is residing with the staff member.

(iii) A “dependent child” is a child for whom the staff member provides main and continuing support and who meets one of the following criteria:

a. The child is under the age of 18 years.

b. The child is between the ages of 18 and 21 years and attends university or its equivalent full-time; the requirement of residing with the staff member does not apply in this case.

c. The child is of any age and has a disability as medically determined by the Secretary-General as being permanent or for a period that is expected to be long-term that prevents substantial gainful employment.

(iv) Staff members claiming a child as a dependant must certify that they provide main and continuous support. This certification must be supported by documentary evidence under conditions established by the Secretary-General, if a child:

- a. Does not reside with the staff member;
- b. Is married; or
- c. Is recognized as a dependant under subparagraph (a) (iii) c. above.

265. Section 1.5 of ST/AI/2018/6 (Dependency status and dependency benefits) states that (emphasis added):

Eligible staff members shall be entitled to receive dependency benefits for those family members whose dependency status has been recognized, provided the conditions of the present instruction are met.

266. The same rule is adopted in section 1.5 of ST/AI/2018/6/Rev.1.

267. Section 1.2 of ST/AI/2018/6/Rev.1 states that dependency status may be recognised in respect of “[a] dependent child or children, as defined in sections 3.1 and 3.2, and in section 5.1 for a child with a disability”.

268. Section 3 of ST/AI/2018/6/Rev.1 reads as follows in its relevant part:

**Dependent child or children**

*Dependency status of a child or children*

3.1 In accordance with staff rule 3.5 (a) (ii), a natural child, a legally adopted child or a stepchild, provided the stepchild resides with the staff member, shall be recognized as a dependent child when the following conditions are met:

- (a) The child is under 18 years of age or, if in full-time attendance<sup>3</sup> at school, university or a similar educational institution, under 21 years of age; and



(b) The staff member certifies that the staff member provides main and continuing support to the child in an amount that is equal to or greater than the amount of the dependent child allowance, except in child support cases, when it should be at least the amount of the court-ordered child support or the amount of the dependent child allowance received from the Organization, whichever is higher. Such self-certification must be supported by documentary evidence satisfactory to the Secretary-General, if a child:

- (i) Does not reside with the staff member or with the spouse of the staff member;
- (ii) Is married; or
- (iii) Is recognized as a dependent under the special conditions defined in section 3.2.

269. Section of 1.6 ST/AI/2018/6/Rev.1 states that:

When two staff members, or a staff member and a staff member of another Organization of the United Nations common system, are the parents of a child or children, only one may claim dependency benefits for the dependent child or children. The recipient of dependency benefits shall be the parent who has the higher salary level, unless the contract type is temporary. Either or both staff members may claim benefits for a secondary dependant as defined in section 6.1 below.

270. Section 1.7 of ST/AI/2018/6/Rev.1 states that:

When a staff member is divorced or legally separated from another staff member, the parent who has legal custody of the child or children will receive the dependency benefit. In the case of shared legal custody, section 1.6 shall apply.

#### Child dependency status test vs. child dependency benefit eligibility test

271. The United Nations, through its Staff Rules and ST/AI/2018/6, provides a comprehensive framework for recognizing and providing dependency benefits to eligible staff members.

272. In the context of United Nations benefits, dependency status pertains to the eligibility of a staff member's family members to receive specific benefits based on their relationship with the staff member. In accordance with the applicable rules, dependents of staff members include their UN-recognized spouse, dependent children, and other eligible family members.

273. The child dependency status refers to whether the child is recognized as a dependent of a staff member. This recognition is based on specific conditions outlined in secs. 1.2 and 3.1 of ST/AI/2018/6. According to sec. 3.1, a child (whether natural, legally adopted, or a stepchild) is recognized as a dependent child when the child either resides with the staff member or the staff member certifies that he/she provides main and continuing support to the child if the child does not live with him/her. It is only when the child meets these criteria that the child is recognized as a dependent child.

274. Child dependency benefit eligibility determines whether a staff member qualifies to receive the child dependency allowances. Child dependency benefit eligibility is governed by secs. 1.5, 1.6, and 1.7 of ST/AI/2018/6. When two staff members, or a staff member and a staff member of another Organization of the United Nations common system, are the parents of a child or children, only one may claim dependency benefits for the dependent child or children. Under these circumstances, the recipient of dependency benefits shall be the parent who has the higher salary level.

275. When a staff member is divorced or legally separated from another staff member, the parent who has legal custody of the child or children will receive the dependency benefit. In the case of shared legal custody granted for divorced or separated parents, the recipient of dependency benefits shall be the parent who has the higher salary level.

276. On the one hand, the dependency status of a child refers to who is recognized as a dependent child based on specific criteria or certain conditions provided by the law. These conditions often relate to the child's living situation, such as where they reside, their age, and the level of support provided by the staff member. On the other hand,

child dependency benefit eligibility refers to which staff members qualify to receive child dependency benefits or are entitled to receive child dependency allowances.

277. According to sec. 1.5 of ST/AI/2018/6, eligible staff members are entitled to receive dependency benefits for those family members whose dependency status has been recognized, provided the conditions of the administrative instruction are met.

278. Before determining who is eligible to receive dependency benefits, this rule necessitates the determination of the dependency status of the child. In other words, the child must be first recognized as a dependent child. This requirement underscores the importance of establishing the dependency status as a precursor to the provision of dependency benefits.

279. In the context of the United Nations' rules regarding child dependency, it is important to note that there are two distinct tests: the Child Dependency Status test and the Child Benefit Eligibility test.

273. The Child Dependency Status test is the initial assessment used to determine whether a child qualifies as a dependent child. This test primarily focuses on verifying whether the child in question is indeed dependent on the staff member applying for the dependency benefits. As indicated in sec. 3.1 of ST/AI/2018/6, it focuses on factors such as the child's age, living situation, marital status, and financial support provided by the staff members and others.

274. Following the determination of dependency status, the Child Benefit Eligibility test is conducted. This test assesses whether the staff member is eligible to receive the benefits or entitled to dependency allowances. As indicated in secs. 1.6 and 1.7 of ST/AI/2018/6, factors such as the marital status, the salary level, legal custody/shared legal custody and other relevant circumstances are considered in this assessment.

275. However, it is crucial to note that the Child Dependency Status test always precedes the Child Benefit Eligibility test. This is because as indicated on sec. 1.5 of ST/AI/2018/6 eligible staff members are entitled to receive dependency benefits only for those family members whose dependency status has been recognized. Staff members' entitlement to child dependency benefits can only be assessed after the dependency status of the child has been recognized or established.

276. While both tests play a vital role in the Organization's rules regarding child dependency, the Child Dependency Status test is always the first step in the process. This can be inferred from an implied reading of sec. 1.5 of ST/AI/2018/6. This ensures a systematic and fair approach to determining a child's dependency status and subsequent eligibility to benefits of staff members.

277. The Tribunal underscores the importance of adhering to the prescribed order of these tests in the Organization's rules regarding child dependency. It also highlights the need for a thorough and careful assessment in each test to ensure the most accurate and fair outcomes.

278. The rules' emphasis on determining the dependency status before providing the benefits ensures that the benefits are directed towards those who genuinely need them.

279. Moreover, this order of tests encourages staff members to take responsibility for their dependents, as the provision of benefits is contingent upon the staff member providing main and continuing support to the child. This aligns with the United Nations' commitment to promoting family welfare and responsibility.

280. Section 1.5 of ST/AI/2018/6 plays a pivotal role in the provision of dependency benefits in the United Nations.

281. In the present case, the Respondent's argument is that the Applicant received a child dependency allowance for her child Yoan Garba, which she was not entitled to receive. That only Mr. Patrick Cyrille Garba, the father of the child and a staff member with a higher salary level, is eligible to receive the dependency allowance.

282. In consideration of the dependency status of the child, sec. 3.1 of ST/AI/2018/6 stipulates that a child is recognized as a dependent child of a staff member only when the child resides with the staff member, or the staff member provides main and continuing support to the child.

283. The fact that Yoan Garba has always been in the exclusive custody of the Applicant, and the child's father, Mr. Garba, has not lived with or been married to the Applicant, is agreed upon by both the Respondent and the Applicant. Additionally, the witnesses testified that Yoan has always resided with the Applicant. It is proved that the child resides with the Applicant. Hence, Yoan Garba is recognized as a dependent child of the Applicant in relation to the dependency status test of the child pursuant to sec. 3.1 of ST/AI/2018/6.

284. The Applicant testified that her son has always lived with her and never with Mr. Garba. Although Mr. Garba provided some financial support for their son, it was irregular. He would give support when he could, sometimes two months in a row, and other times after three months.

285. During his testimony, Mr. Garba stated that the child does not reside with him. Although he provided evidence of support through bank transfers from 2017, there are no documents from 2018, 2019, or 2020 to show any support provided to his child. He cannot be said to have been providing continuous support.

286. Mrs. Esther Ofumbi Luganda testified that the child was born on 28 August 2017. Mr. Garba applied for the benefit 10 months after his last deposit to the Applicant. The investigation relied on these bank statements as proof of continuous support. Ms. Ofumbi told the Tribunal that Mr. Garba should have been asked to provide a record of more recent support payments, and that the payments on record were not sufficient to prove continuous support.

287. Mr. Harty testified that he did examine the records to determine if Mr. Garba was providing main and continuing support to the child. The witness clearly does not understand the meaning of “main and continuing/continuous support”.

288. Based on the evidence presented, it was established that Yoan Garba resided with the Applicant and never lived with his father. Testimonies from witnesses and examination of other records indicated that Mr. Garba provided support to the child on an irregular basis. The Applicant and other two witnesses, Mr. Garba, and Mrs. Esther Ofumbi Luganda confirmed that the support was occasional at best.

289. According to sec. 3.1(b) of ST/AI/2018/6, if a child does not reside with the staff member, this staff must certify “main and continuing” support for the child to be recognized as a dependent child for eligibility for dependency benefits.

290. The facts on the record can only support the finding that Yoan Garba was not a dependent of his father, Mr. Garba. He was clearly and wholly dependent on his mother, the Applicant. Therefore, the child is recognized as a dependent of the Applicant, not Mr. Garba.

291. Eligibility for the allowance is governed by secs. 1.5, 1.6, and 1.7 of ST/AI/2018/6. Section 1.5 states that eligible staff members are entitled to receive dependency benefits for family members whose dependency status has been recognized. Section 1.6 specifies that when two staff members are parents of a child, only one may claim dependency benefits for the dependent child, and the recipient should be the parent with the higher salary level. However, this rule applies only when

the child is recognized as a dependent child of both parents based on the child dependency status test.

292. As previously mentioned, the Child Dependency Status test always precedes the Child Benefit Eligibility test. In this case, since the child did not reside with Mr. Garba and he was not providing continuous support, the child cannot be recognized as a dependent child of Mr. Garba. Consequently, Mr. Garba fails to pass the Child Dependency Status test and, therefore, he cannot be considered eligible for Child Benefit Eligibility, as the Child Dependency Status test always precedes the Child Benefit Eligibility test.

293. Section 1.7 of ST/AI/2018/6, which states that the parent who has legal custody of the child will receive the dependency benefit, is not applicable in this case as Mr. Garba and the Applicant were not married or legally separated, and no legal custody or shared custody was given by an authorized court of law. Mrs. Ofumbi Luganda testified that shared legal custody should be proved to HR through legal documentation like a Court Order. No evidence of a Court Order granting shared legal custody was presented. Hence this is not applicable to Mr. Garba and the Applicant.

294. Consequently, considering the dependency status of the child and child benefit eligibility requirements as per the rules of the Organization, it is clear that the child is the recognized dependent of the Applicant and the Applicant is eligible under the applicable rules to receive the child dependency allowance.

295. Therefore, the Tribunal confirms that the Applicant is the only staff member eligible to receive dependency benefit.

296. The Tribunal also affirms that the Respondent erred in considering Mr. Garba as the sole staff member eligible to receive the dependency allowance.

### Self-certification

297. The Respondent stressed in its sanction letter that the Applicant is alleged to have engaged in untruthful and dishonest behavior violating sec. 1.13 of ST/AI/2018/6 by certifying the accuracy of an otherwise inaccurate form, and by merely submitting the dependency benefit claim. As such, the Respondent concluded that the Applicant failed to abide by her duty of accurate self-certification, and that she also falsely declared that she met the eligibility criteria for the receipt of a dependency benefit, when in fact she did not. She is alleged to have provided false information to the Organization.

298. The Respondent's argument is that the Applicant was untruthful and provided inaccurate information on the P84 form. Despite her spouse being a staff member of the UN, she answered "N/A" (not applicable) to the question regarding her spouse's UN employment. The Respondent strongly contends before the Tribunal that the Applicant did not fulfill her obligation for accurate self-certification, as she intentionally misrepresented her marital status to the Organization to receive a dependency allowance for her son to which she was not rightfully entitled.

299. Furthermore, the Respondent argues that the Applicant was obliged to disclose that her child's father is a UN employee. Given that the father is the higher-earning UN staff member, he alone is entitled to request a dependency allowance. The Applicant did not inform the Organization at the outset, when first applying for the dependency allowance, that the child's father was also a staff member. She failed to provide complete information and did not fulfill her responsibility for self-certification.

300. Section 1.13 of ST/AI/2018/6 states that:

The responsibility for self-certification rests with the staff member and not with the Organization. Through the self-certification process, the staff member shall attest to understanding and meeting the requisite eligibility criteria. The staff member shall also attest to the correctness of the information provided in the application for dependency benefits and to understanding the consequences of submitting unsubstantiated, incomplete or false information as detailed in section 1.15 below.



301. Section 1.15 of ST/AI/2018/6 states that:

In addition to self-certification, staff members may be required to support their applications for a dependency benefit with documentary evidence. Should such documentary evidence be requested, staff members will be required to submit the requisite information within 30 calendar days of the initial request. Failure to provide the requested information within the applicable time frame or to report changes as detailed in section 1.12 above, or falsification of the information provided, may result in one or more of the following:

- (a) Immediate discontinuation of the dependency benefit(s), as applicable;
- (b) Recovery of dependency benefit(s) previously paid by the Organization;
- (c) Any other administrative and/or disciplinary measures in accordance with staff rule 10.2, including dismissal for misconduct.

302. In the section of this judgement dealing with the provision of incorrect spouse information in the preceding paragraphs, the Tribunal pointed out that the Applicant accurately identified herself as “single” on the P84 form and appropriately filled “N/A” in the spouse-related sections, given that she and Mr. Garba were not legally married. The information she provided on the form was accurate and in line with what was requested and what was in fact the status of her relationship with Mr. Garba. The Tribunal confirmed these details and determined that her entries were in accordance with UN standards and legal definitions. As a result, the Tribunal dismisses the Respondent’s accusation of dishonesty in the Applicant’s submission of spousal information.

303. Therefore, the Tribunal rejects the Respondent’s submission that the Applicant provided incorrect spousal information on the P84 form and failed to meet her obligation for self-certification.

304. Similarly, in the section of this judgement dealing with the information about the father of the child in the preceding paragraphs, the Tribunal affirmed that the Applicant accurately filled out the P84 form.

305. The Applicant could not disclose information on the status of the child's father as a UN staff member on either the P84 form or in Umoja due to their design. She did not withhold this information but was unable to disclose it due to system limitations. However, the birth certificate, which the Applicant provided to HR and which HR verified and uploaded to Umoja, definitively confirmed that the child's father was a UN staff member.

306. Hence, the Tribunal affirms that the Respondent's assertion that the Applicant should have disclosed this information and provided incorrect details is unacceptable. In this context, there is no evidence to suggest that the Applicant failed to fulfill her duty of self-certification as per the applicable rules.

307. In view of the foregoing, the Tribunal, after an exhaustive examination of the detailed arguments, witness testimonies, and other evidence presented, concludes that the facts leading to the disciplinary measure against the Applicant do not amount to misconduct. The Administration has failed to prove the alleged misconduct with clear and convincing evidence.

308. In light thereof, it is not necessary for the Tribunal to review the third prong of the legal test, namely proportionality of the sanction, or the Applicant's submissions on due process irregularities.

309. The Tribunal affirms that the Applicant has not breached staff regulation 1.2, staff rules 1.5(a), 1.7b, and secs. 1.13 and 1.15 of ST/AI/2018/6 and dismisses the Respondent's accusations in this matter.

310. The Tribunal concludes that the contested decision was, therefore, unlawful.

*Relief before the Dispute Tribunal*

311. The Statute of the Dispute Tribunal provides in art. 10.5 an exhaustive list of remedies. The Dispute Tribunal may only order one or both of the following:

(a) Rescission of the contested administrative decision or specific performance provided that, where the contested administrative decision concerns appointment, promotion or termination, the Dispute Tribunal shall also set an amount of compensation that the Respondent may elect to pay as an alternative to the rescission of the contested administrative decision or specific performance ordered, subject to subparagraph (b) of the present paragraph;

(b) Compensation for harm, supported by evidence, which shall normally not exceed the equivalent of two years' net base salary of the Applicant. The Dispute Tribunal may, however, in exceptional cases order the payment of a higher compensation for harm, supported by evidence, and shall provide the reasons for that decision.

312. The Applicant principally seeks the rescission of the contested decision and reinstatement to her former post. She also appeals for the restoration of the incorrectly deducted child allowances, besides what could be eligible considering her child disability allowance claim. Furthermore, the Applicant requests compensation for damages as she suffered from pecuniary damages, and she was the only economic provider in her family of two young kids. Moreover, since the beginning of the investigation, she has suffered from persistent severe stress regarding her professional career and future resulting on moral damage.

313. The Respondent asserts that since the imposition of the disciplinary measure was lawful, its rescission and the reversal of its consequent effects are not warranted.

314. An order for rescission, although technically conceivable within the provisions of the Statute, cannot be made without proper consideration of its effect. In practical terms, the result of such an order would be nothing short of an upheaval in the staffing arrangements of the Organization, which would in turn injure the rights of other staff members. It is perhaps in recognition of the potential effect of such an order that art. 10.5(a) of the Tribunal's Statute *mandates* the Tribunal to also set a monetary

amount that the Respondent may elect to pay as an alternative to rescission or specific performance.

315. Considering the Tribunal's findings on the unlawfulness of the contested decision, the Tribunal finds that this is a case where the only fair remedy for the Applicant would be a rescission of the impugned decision so that she is restored to her *status quo ante*.

316. There was a clear failure of due diligence at almost every level of scrutiny, which resulted in the Applicant, a single mother with two children under her sole care, losing her livelihood. The Tribunal firmly holds that there has been a fundamental breach of the Applicant's rights as an employee of the United Nations. She disclosed what was required of her, told the truth but lost her job.

317. Should the Secretary-General decide against reinstating the Applicant, the Tribunal sets compensation *in lieu* of reinstatement at three years' net-base salary.

#### *Non-pecuniary (moral) damages*

318. The Applicant finally seeks "adequate moral damages" without providing further details. The Tribunal observes that such damages can only be granted under art. 10.5(b) of its Statute, which requires that such compensation for harm be supported by evidence of harm. Since the Applicant did not provide any evidence of non-pecuniary (moral) harm, the Tribunal concludes that there is no ground for granting such compensation.

#### **Observations**

319. This case betrays a failure of due diligence at every step of the process, beginning with the processing of the Applicant's documents by Human Resources.

320. Given the number of layers of scrutiny within the disciplinary process, the Tribunal is astonished that this case came to the sorry conclusion that it did. It begs the question as to whether the layers of scrutiny and approvals envisaged by the system serve to do little more than rubber stamp the various decisions that are made at every step of the process. In this case, there really is no other plausible explanation.

321. OIOS Officials conducted themselves in a manner that can only be described as baffling. They did not interview Ms. Koli who first processed the Applicant's documents, did not think it crucial to locate the birth certificate that was submitted to Human Resources, and went on to decide that the child's father was the Applicant's *spouse* for the purposes of the United Nations based on a poor and colloquial understanding of the term and, on that premise, recommended disciplinary action against the Applicant.

322. It is crucial to mention the Tribunal's observation of the counsel who provided patently incorrect legal advice to the Secretary-General in the decision-making process, which resulted in the Applicant losing her job. Highlighting this ensures that we maintain transparency and accountability in the legal advisory process in a disciplinary procedure of the United Nations. The Tribunal particularly wants to highlight the role of counsel advising the Secretary-General in making this decision. It is important that the counsel advising the Secretary-General is cognizant of their duties in protecting the rules of the United Nations system. Legally untenable or duplicitous positions must be scrupulously avoided at all times.

323. Counsel must assist the Secretary-General in achieving the ends of justice. They must also help the Secretary-General by providing sound advice to prevent wrong decisions, thereby contributing to the fair administration of justice and the promotion of the rule of law.

324. The Tribunal will here endorse the sentiments expressed in *Maiga* UNDT/2015/048:

Counsel must realize that in prosecuting a case, they are first and foremost officers of the Tribunal and their efforts at all times must be directed at laying all their cards face up on the table with a view to helping the Tribunal achieve the ends of justice. Counsel at all times must be beyond reproach and not place themselves in a position where they stand or fall with their clients.

325. The Tribunal reminds Counsel of the instructive findings of the Appeals Tribunal in *Dalgaard et al* 2015-UNAT-532, where the bench observed that:

21. Due diligence by the Secretary-General in the presentation of his case would have obviated the instant proceedings. [...]

...

27. [I]t is the self-evident duty of all counsel appearing before the Tribunals to contribute to the fair administration of justice and the promotion of the rule of law. Counsel for *Dalgaard et al.* failed in this duty by allowing the Appeals Tribunal to proceed on a factual basis which Counsel should have known to be untrue, resulting in an award of moral damages to which *Dalgaard et al.* were not entitled.

326. Had the Respondent exercised more diligence and circumspection, this case would not have had to come this far.

### **Conclusion**

327. In light of the foregoing, the Tribunal DECIDES:

- a. To rescind the contested decision in its entirety;
- b. In respect of compensation *in lieu* of reinstatement, to set its amount at three (3) years' net base salary; and

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c. In addition to the compensation awarded to the Applicant, to direct the Registry to serve a copy of this judgment on the Secretary-General, the Under-Secretary-General, DMSPC, and the Under-Secretary-General, OIOS, to draw their attention to the conduct of the staff members under their charge involved in the present case.

*(Signed)*

Judge Solomon Areda Waktolla  
Dated this 4<sup>th</sup> day of September 2024

Entered in the Register on this 4<sup>th</sup> day of September 2024

*(Signed)*

Wanda Carter, Registrar, Nairobi